

Commission, the Commission staff, or the public;

(vi) The need to respond to a large number of previously-filed FOIA requests.

(i) *Administrative review.* (1) Any person who has been notified pursuant to paragraph (g) of this section that his request for records has been denied in whole or in part may file an application for review as set forth below.

(2) An application for review must be received by the Office of General Counsel within 30 days of the date of the denial by the Assistant Secretary. This 30-day period shall not begin to run until the Assistant Secretary has issued an initial determination with respect to all portions of the request for nonpublic records. An application for review shall be in writing and shall be marked "Freedom of Information Act Appeal." The original shall be sent to the Commission's Office of General Counsel. If the appeal involves information as to which the FOIA requester has received a detailed written justification of a request for confidential treatment pursuant to §145.9(e), the requester must also serve a copy of the appeal on the submitter of the information.

(3) The applicant must attach to the application for review a copy of all correspondence relevant to the request, *i.e.*, the initial request, any correspondence amending or modifying the request, and all correspondence from the staff responding to the request.

(4) The application for review shall state such facts and cite such legal or other authorities as the applicant may consider appropriate. The application may, in addition, include a description of the general benefit to the public from disclosure of that information.

(5) If the appeal involves information that is subject to a petition for confidential treatment filed under §145.9, the submitter of the information shall have an opportunity to respond in writing to the appeal within 10 business days of the date of filing of the appeal. Any response shall be sent to the Commission's Office of General Counsel. Copies shall be sent to the Assistant Secretary of the Commission for FOI,

Privacy and Sunshine Acts Compliance and to the person requesting the information.

(6) The General Counsel, or his or her designee, shall have the authority to consider all appeals under this section from initial determinations of the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. The General Counsel may:

(i) Determine either to affirm or to reverse the initial determination in whole or in part;

(ii) Determine to disclose a record, even if exempt, if good cause for doing so either is shown by the application or otherwise appears;

(iii) Remand the matter to the Assistant Secretary (A) to correct a deficiency in the initial processing of the request, or (B) when an investigation as to which the staff originally claimed exemption from mandatory disclosure on the basis of 5 U.S.C. 555(b)(7)(A) or 7 U.S.C. 12(a) is subsequently closed; or;

(iv) Refer the matter to the Commission for a decision.

(j) If the initial denial of the request for nonpublic records is reversed, the Office of General Counsel shall, in writing, advise the requester that the records will be available on or after a specified date. If, on appeal, the denial of access to a record is affirmed in whole or in part, the person who requested the information shall be notified in writing of (1) the reasons for the denial and (2) the provisions of 5 U.S.C. 552(a)(4) providing for judicial review of a determination to withhold records.

[51 FR 26870, July 28, 1986, as amended at 52 FR 19307, May 22, 1987; 62 FR 17069, Apr. 9, 1997]

§ 145.8 Fees for records services.

A schedule of fees for record services, including locating, and making records available, and copying, appears in appendix B to this part 145. Copies of the schedule of fees may also be obtained upon request made in person, by telephone or by mail from the FOI, Privacy and Sunshine Acts compliance staff,

Office of the Secretariat or at any regional office of the Commission.

(7 U.S.C. 4a(j) and 16a as amended by Pub. L. 97–444, 96 Stat. 2294 (1983), and 5 U.S.C. 552, 552a and 552b)

[41 FR 16290, Apr. 16, 1976, as amended at 49 FR 12684, Mar. 30, 1984]

§ 145.9 Petition for confidential treatment of information submitted to the Commission.

(a) *Purpose.* This section provides a procedure by which persons submitting information in any form to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. This section does not affect the Commission's right, authority, or obligation to disclose information in any other context.

(b) *Scope.* The provisions of this section shall apply only where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter.

(c) *Definitions.* The following definitions apply to this section:

(1) *Submitter.* A "submitter" is any person who submits any information or material to the Commission or who permits any information or material to be submitted to the Commission. For purposes of paragraph (d)(1)(ii) of this section only, "submitter" includes any person whose information has been submitted to a designated contract market or registered futures association that in turn has submitted the information to the Commission.

(2) *FOIA requester.* A "FOIA requester" is any person who files with the Commission a request to inspect or copy Commission records or documents pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(d) *Written request for confidential treatment.* (1) Any submitter may request in writing that the Commission afford confidential treatment under the Freedom of Information Act to any information that he or she submits to the Commission. Except as provided in paragraph (d)(4) of this section, no oral requests for confidential treatment will be accepted by the Commission. The submitter shall specify the

grounds on which confidential treatment is being requested but need not provide a detailed written justification of the request unless required to do so under paragraph (e) of this section. Confidential treatment may be requested only on the grounds that disclosure:

(i) Is specifically exempted by a statute that either requires that the matters be withheld from the public in such manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(ii) Would reveal the submitter's trade secrets or confidential commercial or financial information.

(iii) Would constitute a clearly unwarranted invasion of the submitter's personal privacy.

(iv) Would reveal investigatory records compiled for law enforcement purposes whose disclosure would deprive the submitter of a right to a fair trial or an impartial adjudication.

(v) Would reveal investigatory records compiled for law enforcement purposes whose disclosure would constitute an unwarranted invasion of the personal privacy of the submitter.

(vi) Would reveal investigatory records compiled for law enforcement purposes when disclosure would interfere with enforcement proceedings or disclose investigative techniques and procedures, provided that the claim may be made only by a designated contract market or registered futures association with regard to its own investigatory records.

(2) The original of any written request for confidential treatment must be sent to the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. A copy of any request for confidential treatment shall be sent to the Commission division or office receiving the original of any material for which confidential treatment is being sought.

(3) A request for confidential treatment shall be clearly marked "FOIA Confidential Treatment Request" and shall contain the name, address, and telephone number of the submitter. The submitter is responsible for informing the Assistant Secretary of the